

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JUAN BARRIENTOS MARTINEZ
and JESUS MARTINEZ
GUTIERREZ, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

AUVIL FRUIT COMPANY, INC.,

Defendant.

NO: 2:16-CV-356-RMP

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, Plaintiffs and Defendant and their respective counsel (collectively the “parties”) hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. This agreement does not confer blanket protection on all disclosures or responses to discovery. Instead, the protection it affords from public disclosure and use extends only to the limited information or items that are

1 entitled to confidential treatment under the applicable legal principles, and it does
2 not presumptively entitle parties to file confidential information under seal.

3 2. “CONFIDENTIAL” MATERIAL

4 “Confidential” material shall include the following documents and tangible
5 things, and information related thereto, produced or otherwise exchanged: (1)
6 personal information about current and former employees of Defendant, including
7 Plaintiffs and class members (e.g., Social Security numbers, birth dates, personal
8 contact information, personal performance and evaluation information, personal
9 disciplinary information, personal financial information, and personal medical
10 information); (2) personal, medical, financial or business data about Plaintiffs and
11 class members, members of their families or other individuals that is not generally
12 available to the public; and (3) proprietary and financial information of Defendant.

13 3. SCOPE

14 The protections conferred by this agreement cover not only confidential
15 material (as defined above), but also (1) any information copied or extracted from
16 confidential material; (2) all copies, excerpts, summaries, or compilations of
17 confidential material; (3) written discovery or informal discovery that contains
18 confidential information; and (4) any testimony, conversations, or presentations by
19 parties or their counsel that might reveal confidential material. However, the
20 protections conferred by this agreement do not cover information that is in the public
21 domain or becomes part of the public domain through trial or otherwise.

1 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

2 4.1 Basic Principles. A receiving party may use confidential material that
3 is disclosed or produced by another party or by a non-party in connection with this
4 case only for prosecuting, defending, or attempting to settle this litigation.

5 Confidential material may be disclosed only to the categories of persons and
6 under the conditions described in this agreement. Confidential material must be
7 stored and maintained by a receiving party at a location and in a secure manner that
8 ensures that access is limited to the persons authorized under this agreement.

9 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
10 otherwise ordered by the Court or permitted in writing by the designating party, a
11 receiving party may disclose any confidential material only to:

12 (a) the receiving party’s counsel of record in this action, as well as
13 employees of counsel to whom it is reasonably necessary to disclose the information
14 for this litigation;

15 (b) the officers, directors, and employees (including in house
16 counsel) of the receiving party to whom disclosure is reasonably necessary for this
17 litigation;

18 (c) experts and consultants to whom disclosure is reasonably
19 necessary for this litigation and who have signed the “Acknowledgment and
20 Agreement to Be Bound” (Exhibit A);

21 (d) the court, court personnel, and court reporters and their staff;

1 (e) copy or imaging services retained by counsel to assist in the
2 duplication of confidential material, provided that counsel for the party retaining the
3 copy or imaging service instructs the service not to disclose any confidential material
4 to third parties and to immediately return all originals and copies of any confidential
5 material;

6 (f) during their depositions, witnesses in this action to whom
7 disclosure is reasonably necessary. Pages of transcribed deposition testimony or
8 exhibits to depositions that reveal confidential material must be separately bound by
9 the court reporter and may not be disclosed to anyone except as permitted under this
10 agreement;

11 (g) the author or recipient of a document containing the information
12 or a custodian or other person who otherwise possessed or knew the information.

13 4.3 Filing Confidential Material. Before filing confidential material or
14 “excerpting or quoting” such material in court filings, the filing party shall confer
15 with the designating party to determine whether the designating party will remove
16 the confidential designation, whether the document can be redacted, or whether a
17 motion to seal or stipulation and proposed order is warranted.

18 5. DESIGNATING PROTECTED MATERIAL

19 5.1 Exercise of Restraint and Care in Designating Material for Protection.

20 Each party or non-party that designates information or items for protection under
21 this agreement must take care to limit any such designation to specific material that

1 qualifies under the appropriate standards. The designating party must designate for
2 protection only those parts of material, documents, items, or oral or written
3 communications that qualify, so that other portions of the material, documents,
4 items, or communications for which protection is not warranted are not swept
5 unjustifiably within the ambit of this agreement.

6 Mass, indiscriminate, or routinized designations are prohibited.

7 If it comes to a designating party's attention that information or items that it
8 designated for protection do not qualify for protection, the designating party must
9 promptly notify all other parties that it is withdrawing the mistaken designation.

10 5.2 Manner and Timing of Designations. Except as otherwise provided in
11 this agreement, or as otherwise stipulated or ordered, disclosure or discovery
12 material that qualifies for protection under this agreement must be clearly so
13 designated before or when the material is disclosed or produced.

14 (a) Information in documentary form: (*e.g.*, paper or electronic
15 documents and deposition exhibits, but excluding transcripts of depositions or
16 other pretrial or trial proceedings), the designating party must affix the word
17 "CONFIDENTIAL" to each page that contains confidential material. If only a
18 portion or portions of the material on a page qualifies for protection, the producing
19 party also must clearly identify the protected portion(s) (*e.g.*, by making
20 appropriate markings in the margins). Native format document production will be
21 designated confidential by adding the word "CONFIDENTIAL" to the file name of

1 the native format document produced, or by affixing the word “CONFIDENTIAL”
2 to the label of the media on which the native format documents are produced as per
3 Section 5.2(c) below.

4 (b) Testimony given in deposition or in other pretrial or trial
5 proceedings: the parties must identify on the record, during the deposition, hearing,
6 or other proceeding, all protected testimony, without prejudice to their right to so
7 designate other testimony after reviewing the transcript. Any party or non-party
8 may, within fifteen (15) days after receiving a deposition transcript, designate
9 portions of the transcript, or exhibits thereto, as confidential.

10 (c) Other tangible items: the producing party must affix in a
11 prominent place on the exterior of the container or containers in which the
12 information or item is stored the word “CONFIDENTIAL.” If only a portion or
13 portions of the information or item warrant protection, the producing party, to the
14 extent practicable, shall identify the protected portion(s).

15 (d) Written discovery: Written discovery may be designated
16 confidential by affixing the word “CONFIDENTIAL” to each page of the discovery
17 response that contains confidential information.

18 (e) All confidential information not reduced to documentary or
19 tangible form or which cannot be conveniently designated as set forth above, shall
20 be designated by the producing party informing the receiving party of the
21 designation in writing.

1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
2 failure to designate qualified information or items does not, standing alone, waive
3 the designating party's right to secure protection under this agreement for such
4 material. Upon timely correction of a designation, the receiving party must make
5 reasonable efforts to ensure that the material is treated in accordance with the
6 provisions of this agreement.

7 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

8 6.1 Timing of Challenges. Any party or non-party may challenge a
9 designation of confidentiality at any time. Unless a prompt challenge to a
10 designating party's confidentiality designation is necessary to avoid foreseeable,
11 substantial unfairness, unnecessary economic burdens, or a significant disruption or
12 delay of the litigation, a party does not waive its right to challenge a confidentiality
13 designation by electing not to mount a challenge promptly after the original
14 designation is disclosed.

15 6.2 Meet and Confer. The parties must make every attempt to resolve any
16 dispute regarding confidential designations without court involvement. Any motion
17 regarding confidential designations or for a protective order must include a
18 certification, in the motion or in a declaration or affidavit, that the movant has
19 engaged in a good faith meet and confer conference with other affected parties in an
20 effort to resolve the dispute without court action. The certification must list the date,
21 manner, and participants to the conference. A good faith effort to confer requires a

1 face-to-face meeting or a telephone conference.

2 6.3 Judicial Intervention. If the parties cannot resolve a challenge without
3 court intervention, the designating party may file and serve a motion to retain
4 confidentiality. The burden of persuasion in any such motion shall be on the
5 designating party. Frivolous challenges, and those made for an improper purpose
6 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
7 expose the challenging party to sanctions. All parties shall continue to maintain the
8 material in question as confidential until the court rules on the challenge.

9 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED
10 PRODUCED IN OTHER LITIGATION

11 If a party is served with a subpoena or a court order issued in other litigation
12 that compels disclosure of any information or items designated in this action as
13 “CONFIDENTIAL,” that party must:

14 (a) promptly notify the designating party in writing and include a
15 copy of the subpoena or court order;

16 (b) promptly notify in writing the party who caused the subpoena or
17 order to issue in the other litigation that some or all of the material covered by the
18 subpoena or order is subject to this agreement. Such notification shall include a copy
19 of this agreement; and

20 (c) cooperate with respect to all reasonable procedures sought to be
21 pursued by the designating party whose confidential material may be affected.

1 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
3 confidential material to any person or in any circumstance not authorized under this
4 agreement, the receiving party must immediately (a) notify in writing the
5 designating party of the unauthorized disclosures, (b) use its best efforts to retrieve
6 all unauthorized copies of the protected material, (c) inform the person or persons to
7 whom unauthorized disclosures were made of all the terms of this agreement, and
8 (d) request that such person or persons execute the “Acknowledgment and
9 Agreement to Be Bound” that is attached hereto as Exhibit A.

10 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
11 PROTECTED MATERIAL

12 9.1 When a producing party gives notice to receiving parties that certain
13 inadvertently produced material is subject to a claim of privilege or other protection,
14 the obligations of the receiving parties are those set forth in Federal Rule of Civil
15 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
16 may be established in an e-discovery order or agreement that provides for production
17 without prior privilege review.

18 9.2 Pursuant to Fed. R. Evid. 502(d), inadvertent production of documents
19 subject to work-product immunity, the attorney-client privilege, or other legal
20 privilege protecting information from discovery shall not constitute a waiver of the
21 immunity or privilege.

 The confidentiality obligations imposed by this agreement shall remain in
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1 effect until a designating party agrees otherwise in writing or a court orders
2 otherwise.

3 The District Court Clerk is directed to enter this Order and provide copies to
4 counsel

5 **DATED** this 17th day of January 2017.

6 *s/ Rosanna Malouf Peterson*
7 ROSANNA MALOUF PETERSON
8 United States District Judge
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